



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: January 15, 2008

Number: **200815035**

Release Date: 4/11/2008

UIL: 501.03-19
501.36-01

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038 (CG) (11-2005)
Catalog Number 47632S

200815035

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If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert S. Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter

Letter 4038(CG) (11-2005)
Catalog Number 476328



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200815035

Date: November 29, 2007

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

- A = Organization
- B = Date of Incorporation
- C = State of Incorporation
- D = Facility
- E = Original membership fee
- F = Percentage of membership for quorum at meetings
- G = Date of amendment to change membership fee
- H = Revised membership fee
- I = Fee for round of golf with lesson
- J = Amount of course time to conduct clinics
- K = Amount of time to conduct all activities
- L = Fee for range, balls and 9 holes
- M = Percentage of income from merchandise sales
- N = Distance to similar commercial operations
- O = Distance to two nearest similar commercial operations
- P = Date of Response
- Q = Single share price
- R = Maximum number of shares that may be held by an individual or organization
- S = Total number of shares to be sold

UIL Index:

501.03-19
501.36-01

Dear

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

ISSUE:

Does the applicant qualify for tax exemption under section 501(c)(3) of the Code?

Name of Organization
Employer Identification Number

FACTS:

A was incorporated on B under the laws of C. A's stated purposes, in pertinent part, are to enforce all of the restrictions and conditions of the A, acquire such interest as it may be necessary to acquire all land, buildings, equipment, furniture, etc., for the use and benefit of the members of A, and to maintain D and every part thereof in a clean and sanitary condition, so far as A can legally act.

The activities of your organization as stated in your application for exemption include instructing people on the benefits of golf, providing instruction on how to play, and providing a history of golf for the public.

You have stated that your organization will have members and that members may play 9 holes of golf throughout the year. Your Articles of Incorporation state that a one-time payment of E is required to become a voting member and that F of the membership constitutes a quorum at any membership meeting. An amendment to your Articles of Incorporation filed on G reduced the membership fee from E to H.

In subsequent correspondence, you stated when instructing people on the benefits of golf, the golf manager and members hold clinics in the evenings on the driving range. The clinics are publicized and lessons are usually free unless a round of golf is included and then the cost is I. This activity takes up about J of the course time.

You also stated when providing instruction on how to play, the lessons and the use of the range are free and local high schools have use of the course for their competitions at no cost. Also, you provide a local history of golf for the general public through a display in D.

You provided a general summary of your activities and stated that you invite the public to the golf course, take approximately one hour to review the history of the game and the clothing, and another hour to show the participants how to play the game. You have about five members who share in the responsibilities of the presentation. The activities are conducted at D and the facilities located nearby on Saturdays during the school year and on various days during the summer. D is open Monday through Sunday from 8 a.m. to dark. The seminars are conducted approximately every other week.

You stated that the activities are done approximately K of the time. In addition, the general public can play on the golf course and anyone who wants to know about golf may participate. You state there is no selection process and the activity is open to the public. L is charged for the range, golf balls, and participants can play 9 holes. M of your income is from sales of history books, lessons, and golf equipment. You stated that the activities further the education of the game of golf, which is declining rapidly in the United States.

You provided subsequent information and stated that, "a public golf course is focused on the making of a profit. Their golf course is focused on educating the public on the history and benefits of golf." You stated you believe no other golf course offers seminars or lessons about the game of

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golf and the health benefits of golf. You have stated that your course displays the local history of golf, whereas you believe no other course does this. You state you also offer the golf course free of charge to the high school teams and believe other courses would charge for use of their course. You also stated that there are several other courses located within N of D.

You further stated that even though the course is open for a lengthy period of time, the majority of time the course is open and used, the use of the course and facilities is for the nonprofit activity. In addition, even though the golf course has some people pay for the personal use of the golf course, the money is used for the nonprofit activity. The golf course is at least O from the two golf courses nearest to D. Those courses have their own constituencies and will not be impacted by the organization obtaining nonprofit status. Moreover, you state that you are about to offer local schools an opportunity to teach golf to the students during the school year.

Information on the as shown in the chart below, which you verified as accurate in your response dated P, indicates that your organization operates a golf course open to the public allowing anyone to play a round of golf.

Individual Membership	\$	
Family Membership	\$	
Student Membership	\$	
Cart Storage Fee – Electric	\$	
Cart Storage Fee – Gas	\$	
Personal Clubhouse Locker	\$	
9 holes	\$, with cart \$
18 holes	\$, with cart \$
Range Balls – Small Basket	\$	
Range Balls – Large Basket	\$	
Club Rentals	\$	Price subject to change
Activity Room		Call for pricing

In reviewing the chart, it is evident that standard green fees and cart rental fees apply. In addition, annual memberships are available at individual, family, and student levels, with prices varying accordingly. You also provide cart storage, personal clubhouse lockers, driving range and balls, club rentals, and an activity room available for special group events, all for a fee. A snack bar and a pro shop are on the premises. You stated that although you do not have pamphlets or brochures, you do publicize your activities in local newspapers.

Although you are not authorized to issue shares of capital stock, you allow individuals or participating organizations to become a participating member by issuing membership "shares" which insure the holders have voting privileges regarding course policy and other items of club management. Becoming a shareholder allows one to become an officer of your organization. A single share sells for Q and the maximum number of shares that may be held by any single

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individual or corporation is R. No more than S total shares shall be sold. One does not need to be a playing member to purchase or hold a share. Shares are sold at a one-time price and will hold their value in perpetuity. Shares may be resold or passed on as a legal document to heirs of an estate and the share rights will also be passed on.

LAW:

Section 501(a) of the Internal Revenue Code of 1986 provides for the exemption from federal income tax for organizations described in Section 501(c)(3). Such organizations are recognized if they are organized and operated exclusively for religious, charitable, and educational purposes.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for educational purposes unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(a)(1) of the Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Focus in deciding whether corporation qualifies for tax-exempt status is on the manner of operation of its business, not whether it is organized under "not-for-profit" corporate statutes.

Rev. Rul. 73-127, 1973-1 CB 221, states that A nonprofit organization that operates a cut-price retail grocery outlet and allocates a small portion of its earnings to provide on-the-job training to hard-core unemployed does not qualify for exemption from income tax. The organization's purpose of providing job training for the hard-core unemployed is charitable and educational within the meaning of the common law concept of charity, section 501(c)(3) of the Code, and sections 1.501(c)(3)-1(d)(2) and 1.501(c)(3)-1(d)(3)(i)(a) of the regulations. However, the organization's purpose of operating a retail grocery store where food is sold to residents of a poverty area at low prices is not recognized as a charitable purpose under the basic common law concept of charity and within the meaning of section 501(c)(3) of the Code and section 1.501(c)(3)-1(d)(2) of the regulations.

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Although the nature of the job training in this case is primarily "on-the-job" training and thus requires the existence of an operating business as its "campus," the size and manner of the food store operation and the facts relating to the actual purpose of the undertaking evidence that the operation of the store as a low cost retail grocery outlet is in itself an independent objective of the organization. This is true notwithstanding that the store operation is used in part as a vehicle for the training program. It is conducted on a scale larger than is reasonably necessary for the performance of the organization's training program and was not intended to, nor does it in fact, serve solely as a vehicle for carrying out the training program of the organization.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179, the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Schoqer Found. v. Commissioner, 76 T.C. 380, 386 (1981), states that if one of the activities purposes, however, is substantial and nonexempt (e.g., commercial), the organization will be denied exempt status under section 501(c)(3) of the Code, even if its activity also furthers an exempt (e.g., religious) purpose.

APPLICATION OF LAW:

Section 501(c)(3) of the Code sets forth two main tests for qualification for tax exempt status. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3). You have satisfied the organizational test.

To satisfy the operational test, you must be operated exclusively for one or more exempt purposes. You will not be "operated exclusively for one or more exempt purposes" as set forth in sections 1.501(c)(3)-1(c)(1) of the Regulations unless you are only engaged primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3).

The question is not whether you operate to make a profit or whether you conduct activities which are charitable and educational. The issue lies with the operation of a commercial activity which is more than insubstantial and which does not further an exempt purpose. Operating in the manner described above, you conduct a commercial operation which is not insubstantial in nature, does not further a charitable or educational purpose, and thus places itself in direct competition with other organizations with commercial interests. Based on the information submitted, we hold that you do not qualify for tax exemption under section 501(c)(3) because you are not operated exclusively for one or more exempt purposes.

Similar to the organization described in Revenue Ruling 73-127 above, you conduct a commercial operation on a scale larger than is reasonably necessary for the performance of the your

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Employer Identification Number

educational program and is not intended to, nor does it in fact, serve solely as a vehicle for carrying out the educational program of the organization.

The presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes. Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945). Like the Better Business Bureau of Washington D.C., Inc., you are furthering a substantial non-exempt purpose by the operation of D.

If one of the activities purposes, however, is substantial and nonexempt (e.g., commercial), the organization will be denied exempt status under section 501(c)(3) of the Code, even if its activity also furthers an exempt (e.g., religious) purpose. Schoger Found. v. Commissioner, 76 T.C. 380, 386 (1981). You are furthering a substantial and non-exempt purpose by the operation of D.

APPLICANT POSITION:

You state that you believe you meet requirements for exemption. You state that the majority of the time the course is open and used is for the nonprofit activity. You state even though the golf course has some people pay for the personal use of the golf course, the money is used for the nonprofit activity.

Also stated in your position is that the golf course is far enough away from the two nearest golf courses and that the other courses have their own constituencies so as to not be impacted by the organization obtaining nonprofit status. Lastly, you state you are about to offer the local schools an opportunity to teach golf to the students during the school year.

SERVICE RESPONSE TO APPLICANT POSITION:

We hold that you do not meet the requirements for tax exemption under section 501(c)(3) because you are not operated exclusively for exempt purposes. Although your application describes your primary activity as conducting educational seminars relating to the game of golf, the information presented to the public via the Internet discloses that you open your facility to the public, and that this is not merely an insubstantial part of your overall activities.

You are similar to the organization described in Revenue Ruling 73-127, *supra*, in that you provide commercially available services and facilities to the public on a fee-for-service basis. Accordingly, we hold that you do not qualify for tax exemption under section 501(c)(3).

CONCLUSION:

Based on the facts presented in your application, we conclude that you are not tax exempt under section 501(c)(3) of the Code because you do not meet the operational test outlined in

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section 1.501(c)(3)-(1)(c) of the Regulations.

This section of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3) of the Code.

Accordingly, you do not qualify for exemption under section 501(c)(3) of the Code because you do not meet the proscriptions outlined in sections 1.501(c)(3)-1(c) of the Regulations.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for

Name of Organization
Employer Identification Number

the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:
Internal Revenue Service
EO Determinations Quality Assurance

Deliver to:
Internal Revenue Service
EO Determinations Quality Assurance

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements